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Second periodic reports of States parties due in 1996

Addendum

ISRAEL*

[17 February 1997]

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* The present document contains a revised version of the special report submitted by Israel on 6 December 1997 in accordance with a request made by the Committee against Torture on 22 November 1996. The second periodic report, when submitted by Israel, will be issued in a separate document. The initial report submitted by Israel is contained in document CAT/C/16/Add.4; for its consideration by the Committee, see documents CAT/C/SR.183 and 184 and Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44 (A/49/46), paras. 159-171.

I. ISRAEL'S INTERROGATION POLICIES AND PRACTICES

1. In the last month, the Supreme Court handed down a decision which cancelled an interim injunction ordering the General Security Service (GSS) to abstain from the use of any physical pressure during the interrogation of a detainee. Since this decision was the subject of much controversy and was given an utterly mistaken interpretation in the world media, we found it necessary to submit this paper in order to clarify Israel's interrogation policies and practices and in particular the above-mentioned decision of the Supreme Court.

2. We would like to emphasize that Israeli law strictly forbids all forms of torture or maltreatment. The Israeli Penal Code (1977) prohibits the use of force or violence against a person for the purpose of extorting from him a confession to an offence or information relating to an offence. Israel has signed and ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3. The State of Israel maintains that the basic human rights of all persons under its jurisdiction must never be violated, regardless of the crimes that the individual may have committed. Israel recognizes, however, its responsibility to protect the lives of both Jews and Arabs from harm at the hands of terrorist organizations active throughout the world. To prevent terrorism effectively while ensuring that the basic human rights of even the most dangerous of criminals are protected, the Israeli authorities have adopted strict rules for the handling of interrogations. These guidelines are designed to enable investigators to obtain crucial information on terrorist activities or organizations from suspects who, for obvious reasons, would not volunteer information on their activities, while ensuring that the suspects are not maltreated.

II. THE LANDAU COMMISSION

4. The basic guidelines on interrogation were set by the Landau Commission of Inquiry. The Commission, headed by former Supreme Court President, Justice Moshe Landau, was appointed following a decision of the Government of Israel in 1987 to examine the General Security Service's methods of interrogation of terrorist suspects. In order to compile its recommendations, the Landau Commission examined international human rights law standards, existing Israeli legislation prohibiting torture and maltreatment, and guidelines of other democracies confronted with the threat of terrorism.

5. The Landau Commission envisioned its task as defining "with as much precision as possible, the boundaries of what is permitted to the interrogator and mainly what is prohibited to him". The Commission determined that in dealing with dangerous terrorists who represent a grave threat to the State of Israel and its citizens, the use of a moderate degree of pressure, including physical pressure, in order to obtain crucial information, is unavoidable under certain circumstances. Such circumstances include situations in which information sought from a detainee believed to be personally involved in serious terrorist activities can prevent imminent murder, or where the

detainee possesses vital information on a terrorist organization which could not be uncovered by any other source (for example, location of arms or caches of explosives for planned acts of terrorism).

6. The Landau Commission recognized the danger posed to the democratic values of the State of Israel should its agents abuse their power by using unnecessary or unduly harsh forms of pressure. As a result, the Commission recommended that psychological forms of pressure be used predominantly and that only "moderate physical pressure" (not unknown in other democratic countries) be sanctioned in limited cases where the degree of anticipated danger is considerable.

7. It should be noted that the use of such moderate pressure is in accordance with international law. For example, when asked to examine certain methods of interrogation used by Northern Ireland police against IRA terrorists, the European Court of Human Rights ruled that "ill-treatment must reach a certain severe level in order to be included in the ban [of torture and cruel, inhuman or degrading punishment] contained in Article 3 [of the European Convention on Human Rights]". In its ruling, that Court disagreed with the view of the Commission that the above-mentioned methods could be construed as torture, though it ruled that their application <u>in combination</u> (emphasis added) amounted to inhuman and degrading treatment. The question whether each of these measures separately would amount to inhuman and degrading treatment was therefore left open by the Court.

8. The Landau Commission was aware that the issue of moderate pressure during interrogation is both a serious and a sensitive one. The guidelines regarding interrogation provide for limited forms of pressure under very specific circumstances, to be determined on a case-by-case basis. They by no means authorize indiscriminate use of force. Rather, specific circumstances have been identified and interrogation practices have been strictly defined in a manner that, in the opinion of the Landau Commission, "if these boundaries are maintained exactly in letter and in spirit, the effectiveness of the interrogation will be assured, while at the same time it will be far from the use of physical or mental torture, maltreatment of the person being interrogated, or the degradation of his human dignity".

9. To ensure that disproportionate pressure is not used, the Landau Commission identified several measures, which have been adopted and are now in force, namely:

(i) Disproportionate exertion of pressure on the suspect is not permissible - pressure must never reach the level of physical torture or maltreatment of the suspect, or grievous harm to his honour which deprives him of his human dignity.

(ii) The use of less serious measures must be weighed against the degree of anticipated danger, according to the information in the possession of the interrogator.

(iii) The physical and psychological means of pressure permitted for use by an interrogator must be defined and limited in advance, by issuing binding directives.

(iv) There must be strict supervision of the implementation in practice of the directives given to GSS interrogators.

(v) The interrogators' supervisors must react firmly and without hesitation to every deviation from the permissible, imposing disciplinary punishment, and in serious cases, causing criminal proceedings to be instituted against the offending interrogator.

10. Once these measures were set down, the Landau Commission went on, in a second section of its report, to precisely detail the exact forms of pressure permissible to the GSS interrogators. This section has been kept secret out of concern that, should the narrow restrictions binding the interrogators be known to the suspects undergoing questioning, the interrogation would be less effective. Palestinian terrorist organizations commonly instruct their members, and have even printed a manual, on techniques of withstanding GSS questioning without disclosing any information. It stands to reason that publishing GSS guidelines would not only enable the organizations to prepare their members better for questioning, but would reassure the suspect as to his ability to undergo interrogation methods without exposing vital information, thus depriving the GSS of the psychological tool of uncertainty.

III. SAFEGUARDS

11. Since the interrogation guidelines are secret, the Government of Israel recognized the importance of establishing safeguards and a system of review of interrogation practices in order to ensure that GSS investigators do not violate the guidelines. As a result, the GSS Comptroller was instructed to check every claim of torture or maltreatment during interrogation. From 1987 until the beginning of 1994, the Comptroller carried out this responsibility, initiating disciplinary or legal action against interrogators in cases where they have been found to have deviated from the legal guidelines. Early in 1994, in accordance with the recommendations of the Landau Commission, responsibility for investigation of claims of maltreatment was transferred to the Division for the Investigation of Police Misconduct in the Ministry of Justice under the direct supervision of the State Attorney.

12. The Landau Commission also recommended that there be external supervision of GSS activities. Since the Landau Commission issued its recommendations, the State Comptroller's Office has launched an examination of the GSS investigator's unit. Upon the completion of its inquiry, the State Comptroller's findings will be submitted to a special subcommittee of the Knesset (Israeli Parliament) State Comptroller Committee.

13. In addition, an agreement between the State of Israel and the International Committee of the Red Cross (ICRC) provides for the monitoring of conditions of detention. Delegates from the ICRC are permitted to meet with detainees in private within 14 days of the arrest. ICRC doctors may examine detainees who complain of improper treatment. All complaints made by the ICRC regarding treatment of prisoners are fully investigated by the relevant Israeli authorities and the findings are made known to the ICRC.

14. In May 1991, a special ad hoc committee composed of members of the GSS and the Justice Ministry was appointed to review complaints against the

conduct of GSS investigators during interrogation at the Gaza Prison investigation section. The committee identified a number of cases in which investigators did not act in accordance with the guidelines for treatment of detainees. As a result of the Committee's findings, action has been taken against GSS investigators involved in those cases.

IV. REVIEW

15. As recommended by the Landau Commission, a special ministerial committee headed by the Prime Minister was established in 1988 under the previous government to review periodically the interrogation guidelines themselves. On 22 April 1993, the ministerial committee determined that certain changes should be made in the GSS guidelines. On the basis of the committee's recommendations, new guidelines were issued to GSS investigators. The new guidelines clearly stipulate that the need and justification for the use of limited pressure by investigators must be established in every case, according to its own special circumstances. The guidelines point out that the use of exceptional methods was intended only for situations where vital information is being concealed and not in order to humiliate, harm or mistreat those under investigation. In addition, it is expressly prohibited to deny a person under investigation food or drink, to refuse him permission to use a bathroom, or to subject him to extreme temperatures. Since then the guidelines have been reviewed from time to time, including during the last year, in the light of the conclusions drawn from recent experience.

16. It should be noted that these guidelines are reviewed against a background of escalating terror. The years since the signing of the Oslo agreement in 1993 have been the bloodiest since the establishment of the State of Israel. During this period Palestinian terrorist groups, such as Hamas and Islamic Jihad, have planned and perpetrated numerous violent attacks which have resulted in the death and injury of hundreds of innocent victims. The spate of suicide bombings on buses and public places designed to terrorize the local population has made it imperative that the defence and security services work as effectively as possible to prevent further terrorist attacks and ensure the security of the population.

17. Within the last year a number of petitions have been submitted to the Supreme Court of Israel sitting as the High Court of Justice demanding that the court issue an injunction forbidding the GSS from using any force throughout the investigation. The court's decisions have dealt with these guidelines and their implementation on a case-by-case basis. Two cases of particular significance are worth mentioning.

18. In December 1995, the High Court of Justice issued an interim injunction on the basis of a petition brought by Abd al-Halim Belbaysi against the GSS (HCJ 336/96), to abstain from the use of physical pressure against the petitioner during his interrogation. At the request of the GSS, this interim order was later cancelled after the petitioner, who had earlier signed a written declaration denying any connection on his part to any illegal activity, admitted that he had planned the heinous terrorist attack at Beit Lid on 22 January 1995 at which two suicide bombers blew themselves up and killed 21 Israelis. Belbaysi confessed that three bombs had been prepared

at his home, that he himself had hidden the bombs in the vicinity of Beit Lid and that on the day of the attack he had handed over two bombs to the two suicide bombers and had driven them to the site of the attack.

19. Belbaysi also provided information which enabled the authorities to retrieve the third bomb, containing 15 kg of explosives, from its hiding place. During the investigation it also became apparent that Belbaysi had additional information regarding serious terrorist attacks in Israel planned for the near future. In order to uncover this essential information, the GSS appealed to the court asking it to cancel the injunction.

20. The court therefore accepted the argument of the GSS attorney that disclosure of this information by Belbaysi could save human lives. In light of this the court cancelled the interim injunction. At the same time the court emphasized the importance of adhering to the rule of law: "... it is clear that the cancellation of the interim order should not be seen as permission for the investigators to use measures which are not compatible with the law and the relevant guidelines."

21. In a more recent case, Muhammed Abdel Aziz Hamdan (HCJ 8049/96), the High Court again cancelled an interim injunction, which had been issued against the GSS following a petition by Hamdan, to abstain from the use of any physical pressure throughout his interrogation. This interim injunction was issued with the agreement of the GSS, who informed the court that at this stage of the investigation, they did not intend to use any physical pressure against the petitioner. However, within 24 hours, as a result of new inquiries and additional information regarding the petitioner, the GSS applied to the court for the cancellation of this interim injunction. It should be noted that Hamdan had previously been detained in 1992 at which time he admitted that he belonged to and was active in the Islamic Jihad cells. At that time he was included in the group of Islamic Jihad and Hamas activists who were deported to Lebanon. Upon his return, Hamdan was sentenced to three additional months of imprisonment, which he completed at the end of February 1994.

22. In July 1995 he was placed under administrative detention for one month, and in March 1996 he was arrested by the Palestinian Authority together with a number of activists of extreme terrorist organizations. He was released in August 1996. In October 1996, the GSS received information which raised definite suspicions that Hamdan had in his possession extremely vital information, the disclosure of which would help save human lives and prevent serious terrorist attacks in Israel, of which there was a real fear of their occurrence in the near future.

23. The conclusion was therefore reached that there was a vital need to immediately continue with the interrogation. It was at this point that the GSS petitioned the Supreme Court to cancel the interim injunction, as it was considered essential to waive the limitations of the interim injunction in order to be able to pressure Hamdan into disclosing information that could prevent danger to many human lives. The attorney for the GSS emphasized that "... the use of such pressure in the present circumstances is allowed by law". He also stated that the physical measures which the GSS wished to use did not amount to "torture" as defined in the Convention against Torture, and that

each of these measures fell under the defence of "necessity" as specified in section 34 (11) of the Penal Law, the conditions of which existed in the present case. In the light of the classified information presented to the court by the GSS, the court was satisfied that there was indeed an extremely high probability that Hamdan did indeed possess extremely vital information the immediate disclosure of which would prevent a terrible disaster and save human lives. In cancelling the interim injunction, the Court stated that "After reviewing the classified material presented to us, we are satisfied that the Respondent does indeed have in his possession information on which a clear suspicion can be based that the Petitioner possesses extremely vital information, the immediate disclosure of which will prevent the most serious attacks. Under these circumstances, we are of the opinion that there is no justification to continue with the interim injunction. Needless to say the cancelling of the interim injunction is not tantamount to permission to use interrogation methods against the Petitioner which are against the law."

V. CONCLUSION

24. In conclusion, we would like first to note that as a result of GSS investigations of terrorist organizations' activists during the last two years, some 90 planned terrorist attacks have been foiled. Among these planned attacks are some 10 suicide bombings; 7 car-bombings; 15 kidnappings of soldiers and civilians; and some 60 attacks of different types including shootings of soldiers and civilians, hijacking of buses, stabbing and murder of Israelis, placing of explosives, etc.

25. The State of Israel prides itself on having an open society with a democratic legal system which is subject to public scrutiny and which respects human values. Israel has a unique procedure for the judicial review of complaints of alleged maltreatment or torture, namely, the Supreme Court of Israel sitting as a High Court of Justice. Anyone who believes he has been wronged - whether a citizen of Israel or someone merely under the jurisdiction of the Israeli authorities - can petition directly to the Supreme Court sitting as a High Court of Justice. Such a petition will be brought before a judge within 48 hours from the time of its submission. Every allegation of maltreatment is taken seriously and investigated. However, it should be noted that individuals arrested, tried or convicted have both personal and political motives for fabricating claims of maltreatment during interrogation. Personal motives include the desire to have a confession ruled inadmissible at trial, to present oneself as a "martyr", or to escape retribution from Palestinian terrorist cells which have often assassinated or tortured individuals who have given information to the Israeli authorities. Political motives include the desire to spread anti-Israel disinformation in the form of unfounded human rights complaints, in order to undermine Israel's human rights image or discredit the GSS.

26. It is the unfortunate reality that, during times of political unrest and violence, restrictions must be placed on individuals who threaten the welfare of the State and its citizens. This paper has been aimed at demonstrating that, despite the harsh reality of continuing terrorism faced by the State of Israel, the State does everything in its power to uphold the rights of all persons under its jurisdiction while ensuring the safety of innocent individuals.

Annex

At the Supreme Court in Jerusalem
Sitting as a High Court of Justice

Before: President A. Barak
Justice M. Cheshin and Justice A. Matza

Applicant: Mohammed Abdel Aziz Hamdan

Represented by: Attorney Advocate Rosenthal from Jaffa St. 33 Jerusalem

vs.

Respondents: The General Security Service

Represented by: The Ministry of Justice, Jerusalem

Decision

President A. Barak

1. The Petitioner is an administrative detainee. He has been interrogated by the Respondent (General Secret Service), and has submitted a petition to this court on 12.11.96. In this petition he complained of the use of physical pressure against him during the interrogation. He requested that the Respondent show cause why he should not abstain from the use of these measures. In addition, an interim injunction was requested to prohibit the use of physical pressure until the decision is given on the petition.

The petition was scheduled for an urgent hearing on 14.11.96, and the State Attorney was informed of this on 13.11.96. The attorney for the Respondent, Mr. Shai Nitzan, asked for a postponement of the hearing. He stated that considering the short period of time that remained until the hearing he did not have enough time to carry out the necessary inquiries needed for the response to the petition. At the same time, it was noted that, "in accordance with the telephone inquiries made, the Respondent had no intention to use physical pressure against the petitioner at this stage of the interrogation.

Therefore, and without admitting to the veracity of the general facts presented in the petition, the Respondent informed the court that he agrees that an interim injunction be issued, barring the use of physical pressure against the Petitioner until the hearing of the actual petition".

On the basis of the statement an interim injunction was issued on that day - 13.11.96, as requested in the petition.

2. Today, 14.11.96, an application on the part of the Respondent has been submitted to us, asking for an urgent hearing to cancel the interim injunction. In giving the reasons for this request, Mr. Nitzan stated that numerous inquiries had been made in the meantime, that the Respondent had received the most updated information regarding the matter under discussion.

Based on this information the Respondent has decided to request that the interim injunction issued by the court be immediately cancelled.

3. In his application the Respondent stated that already in 1992 the Petitioner had been detained for interrogation. He admitted then that he belonged to and was active in the Islamic Jihad cells. At the conclusion of the interrogation he was included in the group of Islamic Jihad and Hamas activists who were deported to Lebanon. Upon his return, the Petitioner was sentenced to 3 additional months of imprisonment, which he completed at the end of February 1994.

In July 1995 he was placed under administrative detention for one month. In March 1996 he was arrested by the Palestinian Authority together with a number of activities of extreme terrorist organizations. He was released in August 1996. The Petitioner remained free for 2 months until he was arrested on 22.10.96 and placed under administrative detention. This detention was based on information which connected him to the activities in the Islamic Jihad.

4. The Respondent notes in his application that a few days before the arrest of the Petitioner the Respondent received information which raised definite suspicions that the Petitioner had in his possession extremely vital information, the disclosure of which would help save human lives and prevent serious terrorist attacks in Israel, of which there was a real fear of their occurrence in the near future. The petitioner was therefore transferred to the detention facility in Jerusalem for interrogation.

In the course of the interrogation additional information accumulated which strengthened the previous information and the fears referred to above. In his application the Respondent stated that such information has been received during the last few days, including the previous night. The Respondent reached the conclusion that there was a vital and urgent need to continue the interrogation immediately without it being subjected to the limitations included in the interim injunction. The withdrawal of these limitations is necessary in order to enable the immediate uncovering of the information in the Petitioner's possession so that danger to human life is prevented. The Respondent pointed out that in his view the use of such pressure in the present circumstances is allowed by law. As specified in Section 34(11) of the Penal Law 1977, the use of physical pressure is permitted in a situation where conditions for the defense of necessity exist.

5. We have held a hearing of this application in the evening hours. We heard the arguments presented by Mr. Nitzan. He submitted that the physical measures which the Respondent wishes to use do not amount to "torture" as defined in the International Convention Against Torture. Mr. Nitzan also noted that each of these measures falls under the defense of necessity as specified in Section 34(11) of the Penal Law, the conditions of which exist in his view in the present case. As against this view, Mr. Rosenthal noted that the use of this defense cannot be made by the Respondent's interrogators. With the consent of Mr. Rosenthal, we have heard the Respondent's interrogators who have presented to us the overall intelligence picture which relates to the Petitioner in particular.

6. After reviewing the classified material presented to us, we are satisfied that the Respondent does indeed have in his possession information on which a clear suspicion can be based that the Petitioner possesses extremely vital information, the immediate disclosure of which will prevent a terrible disaster, will save human lives, and will prevent the most serious terrorist attacks. Under these circumstances, we are of the opinion that there is no justification to continue with the interim injunction (see Misc. Appl. HCJ 336/96 Abd Al Halim Belbaysi vs. The General Security Service) (not published). Needless to say the cancelling of the interim injunction is not tantamount to permission to use interrogation methods against the Petitioner which are against the law. With regard to this matter, we have not been given any information regarding the methods of interrogation which the Respondent wishes to use and we are not taking any stand regarding them. Moreover, our decision applies to the interim injunction only and it does not take any final position with regard to the questions of the principle which were raised before us and which relate to the application of the defense of necessity and its scope. Therefore, we decide to cancel the interim injunction which was issued on 14.11.96.

Justice A. Matza: I agree
Justice M. Cheshin: I agree

Decided as in the decision of President Barak
Given today, 3 Kislev 5756, 14.11.96

True copy of the original